

ASSEMBLY BILL

No. 472

Introduced by Assembly Member Benoit

February 16, 2005

An act to amend Section 12301.6 of the Welfare and Institutions Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 472, as introduced, Benoit. Elder and disabled abuse.

Existing law provides for the In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. Existing law permits services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium. Under existing law, the functions of a nonprofit consortium contracting with the county, or a public authority established for this purpose, include investigating the qualifications and background of potential personnel.

This bill would authorize the investigation of potential personnel by a nonprofit consortium or public authority to include criminal background checks conducted by the Department of Justice, upon the request of the nonprofit consortium or public authority. The bill would provide that a fee may not be charged to a provider, potential personnel, or a recipient to cover any cost related to administering requirements with respect to an investigation, or the costs to certain entities for processing a criminal background check, under these provisions. This bill would provide that it is not to be construed to prohibit the Department of Justice from assessing a fee to cover the

cost of furnishing summary criminal history information pursuant to existing law.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12301.6 of the Welfare and Institutions
2 Code is amended to read:
3 12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a
4 county board of supervisors may, at its option, elect to do either
5 of the following:
6 (1) Contract with a nonprofit consortium to provide for the
7 delivery of in-home supportive services.
8 (2) Establish, by ordinance, a public authority to provide for
9 the delivery of in-home supportive services.
10 (b) (1) To the extent that a county elects to establish a public
11 authority pursuant to paragraph (2) of subdivision (a), the
12 enabling ordinance shall specify the membership of the
13 governing body of the public authority, the qualifications for
14 individual members, the manner of appointment, selection, or
15 removal of members, how long they shall serve, and other
16 matters as the board of supervisors deems necessary for the
17 operation of the public authority.
18 (2) A public authority established pursuant to paragraph (2) of
19 subdivision (a) shall be both of the following:
20 (A) An entity separate from the county, and shall be required
21 to file the statement required by Section 53051 of the
22 Government Code.
23 (B) A corporate public body, exercising public and essential
24 governmental functions and that has all powers necessary or
25 convenient to carry out the delivery of in-home supportive
26 services, including the power to contract for services pursuant to
27 Sections 12302 and 12302.1 and that makes or provides for direct
28 payment to a provider chosen by the recipient for the purchase of
29 services pursuant to Sections 12302 and 12302.2. Employees of
30 the public authority shall not be employees of the county for any
31 purpose.

1 (3) (A) As an alternative, the enabling ordinance may
2 designate the board of supervisors as the governing body of the
3 public authority.

4 (B) Any enabling ordinance that designates the board of
5 supervisors as the governing body of the public authority shall
6 also specify that no fewer than 50 percent of the membership of
7 the advisory committee shall be individuals who are current or
8 past users of personal assistance services paid for through public
9 or private funds or recipients of services under this article.

10 (C) If the enabling ordinance designates the board of
11 supervisors as the governing body of the public authority, it shall
12 also require the appointment of an advisory committee of not
13 more than 11 individuals who shall be designated in accordance
14 with subparagraph (B).

15 (D) Prior to making designations of committee members
16 pursuant to subparagraph (C), or governing body members in
17 accordance with paragraph (4), the board of supervisors shall
18 solicit recommendations of qualified members of either the
19 governing body of the public authority or of any advisory
20 committee through a fair and open process that includes the
21 provision of reasonable, written notice to, and a reasonable
22 response time by, members of the general public and interested
23 persons and organizations.

24 (4) If the enabling ordinance does not designate the board of
25 supervisors as the governing body of the public authority, the
26 enabling ordinance shall require the membership of the
27 governing body to meet the requirements of subparagraph (B) of
28 paragraph (3).

29 (c) (1) Any public authority created pursuant to this section
30 shall be deemed to be the employer of in-home supportive
31 services personnel referred to recipients under paragraph (3) of
32 subdivision (e) within the meaning of Chapter 10 (commencing
33 with Section 3500) of Division 4 of Title 1 of the Government
34 Code. Recipients shall retain the right to hire, fire, and supervise
35 the work of any in-home supportive services personnel providing
36 services to them.

37 (2) (A) Any nonprofit consortium contracting with a county
38 pursuant to this section shall be deemed to be the employer of
39 in-home supportive services personnel referred to recipients
40 pursuant to paragraph (3) of subdivision (e) for the purposes of

1 collective bargaining over wages, hours, and other terms and
2 conditions of employment.

3 (B) Recipients shall retain the right to hire, fire, and supervise
4 the work of any in-home supportive services personnel providing
5 services for them.

6 (d) A public authority established pursuant to this section or a
7 nonprofit consortium contracting with a county pursuant to this
8 section, when providing for the delivery of services under this
9 article by contract in accordance with Sections 12302 and
10 12302.1 or by direct payment to a provider chosen by a recipient
11 in accordance with Sections 12302 and 12302.2, shall comply
12 with and be subject to, all statutory and regulatory provisions
13 applicable to the respective delivery mode.

14 (e) Any nonprofit consortium contracting with a county
15 pursuant to this section or any public authority established
16 pursuant to this section shall provide for all of the following
17 functions under this article, but shall not be limited to those
18 functions:

19 (1) The provision of assistance to recipients in finding
20 in-home supportive services personnel through the establishment
21 of a registry.

22 (2) Investigation of the qualifications and background of
23 potential personnel, *which may include criminal background*
24 *checks requested by the nonprofit consortium or public authority*
25 *and conducted by the Department of Justice. A fee may not be*
26 *charged to a provider, potential personnel, or a recipient to*
27 *cover any cost related to administering the requirements of this*
28 *paragraph or the cost to the Department of Justice or any law*
29 *enforcement agency for processing the criminal background*
30 *check. Nothing in this paragraph shall be construed to prohibit*
31 *the Department of Justice from assessing a fee, pursuant to*
32 *subdivision (e) if Section 11105 of the Penal Code, to cover the*
33 *cost of furnishing summary criminal history information.*

34 (3) Establishment of a referral system under which in-home
35 supportive services personnel shall be referred to recipients.

36 (4) Providing for training for providers and recipients.

37 (5) Performing any other functions related to the delivery of
38 in-home supportive services.

1 (6) Ensuring that the requirements of the personal care option
2 pursuant to Subchapter 19 (commencing with Section 1396) of
3 Chapter 7 of Title 42 of the United States Code are met.

4 (f) (1) Any nonprofit consortium contracting with a county
5 pursuant to this section or any public authority created pursuant
6 to this section shall be deemed not to be the employer of in-home
7 supportive services personnel referred to recipients under this
8 section for purposes of liability due to the negligence or
9 intentional torts of the in-home supportive services personnel.

10 (2) In no case shall a nonprofit consortium contracting with a
11 county pursuant to this section or any public authority created
12 pursuant to this section be held liable for action or omission of
13 any in-home supportive services personnel whom the nonprofit
14 consortium or public authority did not list on its registry or
15 otherwise refer to a recipient.

16 (3) Counties and the state shall be immune from any liability
17 resulting from their implementation of this section in the
18 administration of the In-Home Supportive Services ~~Program~~
19 *program*. Any obligation of the public authority or consortium
20 pursuant to this section, whether statutory, contractual, or
21 otherwise, shall be the obligation solely of the public authority or
22 nonprofit consortium, and shall not be the obligation of the
23 county or state.

24 (g) Any nonprofit consortium contracting with a county
25 pursuant to this section shall ensure that it has a governing body
26 that complies with the requirements of subparagraph (B) of
27 paragraph (3) of subdivision (b) or an advisory committee that
28 complies with subparagraphs (B) and (C) of paragraph (3) of
29 subdivision (b).

30 (h) Recipients of services under this section may elect to
31 receive services from in-home supportive services personnel who
32 are not referred to them by the public authority or nonprofit
33 consortium. Those personnel shall be referred to the public
34 authority or nonprofit consortium for the purposes of wages,
35 benefits, and other terms and conditions of employment.

36 (i) (1) Nothing in this section shall be construed to affect the
37 state's responsibility with respect to the state payroll system,
38 unemployment insurance, or workers' compensation and other
39 provisions of Section 12302.2 for providers of in-home
40 supportive services.

(2) The Controller shall make any deductions from the wages of in-home supportive services personnel, who are employees of a public authority pursuant to paragraph (1) of subdivision (c), that are agreed to by that public authority in collective bargaining with the designated representative of the in-home supportive services personnel pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and transfer the deducted funds as directed in that agreement.

(3) Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payrolling system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

(j) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.

(k) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

(l) (1) The department may adopt regulations implementing this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government

Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section ~~11364.1~~ ~~11346.1~~ and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

(3) Except as otherwise provided for by Section 10554, the Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

(m) (1) In the event that a county elects to form a nonprofit consortium or public authority pursuant to subdivision (a) before the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95, all of the following shall apply:

(A) Subdivision ~~(e)~~ (d) shall apply only to those matters that do not require federal approval.

(B) The second sentence of subdivision ~~(g)~~ (h) shall not be operative.

(C) The nonprofit consortium or public authority shall not provide services other than those specified in paragraphs (1), (2), (3), (4), and (5) of subdivision ~~(d)~~ (e).

(2) Paragraph (1) shall become inoperative when the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95.

(n) (1) One year after the effective date of the first approval by the department granted to the first public authority, the Bureau of State Audits shall commission a study to review the performance of that public authority.

(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the approval specified in subdivision (a). The study shall give special attention to the health and welfare of the recipients under the public authority, including the degree to which all required services have been delivered, out-of-home placement rates,

1 prompt response to recipient complaints, and any other issue the
2 director deems relevant.

3 (3) The report shall make recommendations to the Legislature
4 and the Governor for any changes to this section that will further
5 ensure the well-being of recipients and the most efficient delivery
6 of required services.

7 (o) Commencing July 1, 1997, the department shall provide
8 annual reports to the appropriate fiscal and policy committees of
9 the Legislature on the efficacy of the implementation of this
10 section, and shall include an assessment of the quality of care
11 provided pursuant to this section.